

Message Text

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FM SECSTATE WASHDC

TO AMEMBASSY SAIGON

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E.O. 11652: N/A

TAGS: EINV

SUBJECT: OPIC INSURANCE AND GUARANTIES FOR CONSTRUCTION PROJECTS;
SPECIAL FOREIGN GOVERNMENT APPROVAL PROCEDURES (FGA'S)

1. THE BILATERAL INVESTMENT GUARANTY AGREEMENT IN FORCE BETWEEN
THE UNITES STATES GOVERNMENT AND THE GVN STIPULATES THAT THE US
GOVERNMENT (OPIC) SHALL NOT INSURE OR GUARANTY ANDY PROJECT
WHICH HAS NOT BEEN APPROVED BY THE GVN (THE SECOND PARAGRAPH
OF THE AGREEMENT). INVESTMENT APPROVAL PROCEDURES HAVE BEEN
ESTABLISHED UNDER WHICH PROJECTS ARE NORMALLY APPROVED BY THE
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GVN FOR OPIC INSURANCE OR GUARANTIES IN RESPONSE TO A SPECIFIC

REQUEST BY THE US APPLICANT.

2. THE BASIC PURPOSE OF THIS PROCEDURE IS TO ASSURE THAT THE UNITED STATES GOVERNMENT WILL NOT BE INSURING OR GUARANTEEING INVESTMENT CONNECTED WITH A PROJECT NOT CLEARLY ACCEPTABLE TO THE GVN.

3. REPEATED REQUESTS FROM THE UNITED STATES INTERNATIONAL CONSTRUCTION INDUSTRY HAVE BEEN MADE TO OPIC TO INSTITUTE AN APPROVAL SYSTEM UNDER WHICH THE AVAILABILITY OF OPIC POLITICAL RISK INSURANCE CAN BE KNOWN TO US BIDDERS AT THE TIME BIDS ARE PREPARED AND SUBMITTED TO FOREIGN GOVERNMENTS. THE DELAY IN COMMENCEMENT OF POLITICAL RISK INSURANCE UNDER PRESENT PROCEDURES HAS COMMONLY OPERATED TO DEPRIVE US CONTRACTORS OF COVERAGE DURING SUBSTANTIAL PERIODS OF TIME AND SUCH DELAY, COMBINED WITH THE UNCERTAINTY OF EVENTUAL COVERAGE, HAS ADVERSELY AFFECTED US CONSTRUCTION COMPANIES IN PREPARING BIDS.

4. WHERE AN AWARD OF A CONSTRUCTION CONTRACT BY A HOST GOVERNMENT OR AN AGENCY THEREOF HAS BEEN MADE TO AN AMERICAN CONTRACTOR, IT IS THE VIEW OF OPIC THAT THE CONTRACT AWARD BY THE HOST GOVERNMENT OR AGENCY CAN BE CONSIDERED TO BE A SATISFACTORY PROJECT APPROVAL FOR POLITICAL RISK INSURANCE OR GUARANTY PURPOSES. THE SELECTION OF AN AMERICAN BIDDER UNDER THESE CIRCUMSTANCES REFLECTS GOVERNMENT APPROVAL BOTH OF THE PROJECT AND OF THE US INVESTOR BY THE GOVERNMENTAL AGENCY DIRECTLY CONCERNED. ELIMINATION OF THE NEED FOR A SECOND, SUBSEQUENT APPROVAL, OFTEN FROM AN ENTIRELY DIFFERENT MINISTRY OR AGENCY, ALLOWS OPIC TO MAKE INSURANCE AVAILABLE PROMPTLY TO A US CONTRACTOR UPON HIS SUCCESSFUL SELECTION TO PERFORM THE WORK, WITHOUT PREJUDICE TO ANY IMPORTANT HOST GOVERNMENT INTEREST. SUCH AUTOMATIC INSURANCE APPROVAL SHOULD HAVE SIGNIFICANT BENEFITS TO COOPERATING HOST COUNTRIES BY INCREASING THE NUMBER OF US CONTRACTORS SUBMITTING BIDS AND REDUCING CONTINGENCY FACTORS NOW INCLUDED IN BIDS TO PROVIDE FOR UNINSURED POLITICAL RISKS.

5. IN SOME 46 COUNTRIES OPIC HAS THEREFORE INSTITUTED A PROCEDURE THROUGH WHICH ALL US CONTRACTORS DESIRING INVESTMENT INSURANCE ON A PARTICULAR GOVERNMENT-AWARDED CONTRACT CAN REGISTER WITH OPIC BEFORE MAKING A BID, AND RECEIVE APPROPRIATE ASSURANCE THAT

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OPIC COVERAGE WILL BE AVAILABLE TO AN AMERICAN COMPANY RECEIVING THE AWARD. OPIC NOW PROPOSES TO INSTITUTE A SIMILAR PROCEDURE IN VIETNAM. TO ACHIEVE THE AUTOMATIC APPROVAL SYSTEM DESIRED, WITH FULL GVN CONSENT, A SUPPLEMENTARY UNDERSTANDING WITH THE HOST GOVERNMENT IS NECESSARY. THE ENCLOSED DRAFT NOTE IS DESIGNED TO ACCOMPLISH THIS OBJECTIVE. FYI. NOTING IN THE SUPPLEMENTARY UNDERSTANDING IS INTENDED OR SHALL BE CONSTRUED TO DEROGATE FROM THE POLICY GUIDELINE ADOPTED BY OPIC'S BOARD JULY 29,

1974, WHICH REQUIRES OPIC BOARD APPROVAL OF ALL COMMITMENTS TO INSURE OR TO FINANCE PROJECTS IN VIETNAM. END FYI.

6. ACTION REQUESTED: THE EMBASSY IS REQUESTED TO PROVIDE A DRAFT NOTE USING THE TEXT QUOTED BELOW TO THE GVN. IF THE EMBASSY BELIEVES THE NOTE SHOULD NOT BE DELIVERED, IT IS REQUESTED TO CABLE ITS REASONS TO WASHINGTON PROMPTLY.

WHEN THE NOTE IS DELIVERED, THE DATE OF DELIVERY SHOULD BE REPORTED BY CABLE AS WELL AS THE GVN RESPONSE, WHEN RECEIVED. AN EARLY RESPONSE FROM THE GVN SHOULD BE ENCOURAGED. A CERTIFIED COPY OF THE EMBASSY'S NOTE AND THE SIGNED ORIGINAL OF THE FOREIGN OFFICE REPLY SHOULD BE SENT TO THE DEPARTMENT OF STATE, ATTENTION ASSISTANT LEGAL ADVISER, TREATY AFFAIRS.

QUOTE EXCELLENCY:

I HAVE THE HONOR TO REFER TO THE AGREEMENT BETWEEN OUR TWO GOVERNMENTS RELATING TO INVESTMENT GUARANTIES, EFFECTED BY EXCHANGE OF NOTES OF NOVEMBER 5, 1957, AS AMENDED, AND TO THE PARAGRAPH OF THAT AGREEMENT WHICH PROVIDES THAT THE UNITED STATES GOVERNMENT WILL ISSUE NO INSURANCE OR GUARANTY WITH REGARD TO ANY PROJECT UNLESS IT IS APPROVED BY THE GOVERNMENT OF THE REPUBLIC OF VIET-NAM. WHEN THE GOVERNMENT OF THE REPUBLIC OF VIET-NAM OR AN AGENCY THEREOF HAS ENTERED INTO A CONSTRUCTION CONTRACT WITH A PRIVATE UNITED STATES CONSTRUCTION FIRM, THE UNITED STATES GOVERNMENT IS WILLING TO CONSIDER THE AWARD OF SUCH A CONSTRUCTION CONTRACT AS AN INDICATION OF APPROVAL OF THE PROJECT BY YOUR GOVERNMENT UNDER THE AFOREMENTIONED PARAGRAPH OF THE SUBJECT AGREEMENT. NO FURTHER APPROVAL SHALL BE REQUIRED TO ENABLE THE UNITED STATES GOVERNMENT TO ISSUE INVESTMENT INSURANCE OR GUARANTIES FOR SAID CONSTRUCTION PROJECT. THE UNITED STATES GOVERNMENT TRUSTS THAT THIS ALSO REPRESENTS THE VIEW OF THE GOVERNMENT OF THE REPUBLIC OF

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VIET-NAM.

THIS SPECIAL APPROVAL PROCEDURE SHALL ONLY PERTAIN TO CONSTRUCTION CONTRACTS BETWEEN YOUR GOVERNMENT OR AN AGENCY THEREOF AND PRIVATE UNITED STATES CONSTRUCTION FIRMS FOR SUCH PROJECTS AND SHALL BE IN LIEU OF THE REGULAR APPROVAL PROCEDURES ESTABLISHED BETWEEN OUR TWO GOVERNMENTS FOR THE APPROVAL OF INVESTMENT PROJECTS TO BE SUBJECT OF UNITED STATES GOVERNMENT INSURANCE OR GUARANTIES. I WOULD APPRECIATE RECEIVING YOUR EXCELLENCY'S CONFIRMATION THAT THIS PROCEDURE IS ACCEPTABLE TO THE GOVERNMENT OF THE REPUBLIC OF VIET-NAM.
ACCEPT, EXCELLENCY.....UNQUOTE

7. UNDER REGULAR FGA PROCEDURES PREVIOUSLY ESTABLISHED BETWEEN GVN AND USG, THE AGENCY DESIGNATED BY THE GVN GOVERNMENT RESPONSIBLE FOR GENERAL APPROVALS OF PROJECTS TO BE THE SUBJECT OF

OPPC INSURANCE IS THE MINISTRY OF INDUSTRY, 59 GIA LONG, SAIGON.
EMB REQUESTED CABLE CONFIRMATION CONTINUED RESPONSIBILITY MININD.
OPIC DIRECTIVE ON SUCH FGA PROCEDURES BEING POUCHED EMB
PASS ASHIDA. INGERSOLL

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